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EXAMINER

GRIFFIN, WALTER DEAN

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 060204

Application Number: 09/490,147
Filing Date: January 24, 2000
Appellant(s): FREEL ET AL.

E. Joseph Gess
For Appellant

EXAMINER'S ANSWER

MAILED
JUN 15 2004
GROUP 1700

This is in response to the appeal brief filed on March 29, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,288,393 JESSUP ET AL. 02-1994

5,401,280 KANEKO T AL. 03-1995

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

103 Rejections

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup et al. (5,288,393) in view of Kaneko et al. (5,401,280).

The Jessup reference discloses an unleaded gasoline composition and method of blending the composition. The gasoline composition has a maximum Reid vapor pressure of 7.5 psi, a 50% D-86 distillation point of no greater than 215°F, and a 90% D-86 distillation point of no greater than 315°F. Olefin contents are essentially zero. Jessup specifically discloses that the gasoline requires no methyl tertiary butyl ether to be present in the composition. This discloses the limitation that the gasoline is substantially free of oxygenates. The paraffin content of the gasoline is preferably greater than 85 vol%. This teaching of paraffin content would necessarily require aromatic content to be less than 15 vol%. However, Jessup also discloses that hydrocarbon emissions are reduced when the aromatics content is increased. See entire document, especially column 1, line 27 through column 7, line 58, column 14, lines 3-68, column 15, lines 20-46, and column 17, line 57 through column 18, line 4.

Jessup does not disclose the claimed sulfur content of the gasoline and does not disclose an aromatics content of between 25 and 30 vol%.

The Kaneko reference discloses a gasoline composition in which the sulfur content of the gasoline is preferably below 20 ppmw. See col. 3, lines 16-21.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the gasoline composition of Jessup by limiting the sulfur concentration to values within the range disclosed by Kaneko because a gasoline with this amount of sulfur would not harm the exhaust gas cleaner.

It also would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the gasoline of Jessup by having the aromatics content be between 25 and 30 vol% because increasing aromatics content over that which is explicitly disclosed to values within the claimed range would result in the expectation that hydrocarbon emissions would be reduced.

Providing these modifications to the gasoline of Jessup would necessarily result in a gasoline that fails the predictive model requirements for emissions.

Double Patenting

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, 17-32, and 35-45 of copending Application No. 10/210089. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline

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composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasoline in the present claims and in the claims in 10/210089 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, 17-32, and 35-45 of copending Application No. 10/210090. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasoline in the present claims and in the claims in 10/210090 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, 18-32, and 36-44 of copending Application No. 10/120497. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the

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gasoline in the present claims and in the claims in 10/120497 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, 18-32, and 36-44 of copending Application No. 10/120498. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasoline in the present claims and in the claims in 10/120498 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19, 23-35, and 39-51 of copending Application No. 09/603585. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in 09/603585 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 26-46 of copending Application No. 10/367998. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in 10/367998 have overlapping characteristic values.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,132,479. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in the patent have overlapping characteristic values.

Claims 1-3, 8-17, 22-28, 30-32, 37-42, 44-48, 52-59, 63-70, and 74-76 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-107 of U.S. Patent No. 6,383,236. Although the conflicting claims are not identical, they are not patentably distinct from each other because each set of claims is drawn to a method

of blending a gasoline and the gasoline composition. The claims differ by certain ranges for characteristics of the gasoline. However, the gasolines in the present claims and in the claims in the patent have overlapping characteristic values.

(11) Response to Argument

The argument that the prior art in no manner discloses or suggests the control of sulfur in order to obtain an oxygenate-free gasoline that exhibits low emissions and while not meeting the requirements of the California Predictive Model is not persuasive. The question to be answered is whether or not one of ordinary skill in the art would be motivated to modify the gasoline of Jessup to reduce its sulfur content to the claimed levels. The examiner maintains that one would be motivated to do so in order to protect the exhaust gas cleaner in cars as suggested by the Kaneko reference. While this may not be the same motivation that appellants assert, it is, in the examiner's opinion, reason enough for one to reduce sulfur levels to the claimed amounts.

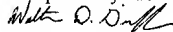
Regarding the presence or not of oxygenates in the gasoline, the examiner maintains that the advantage of reducing sulfur would be present independent of oxygenate concentration.

The argument that the Kaneko reference does not suggest lowering the sulfur amounts to 10 ppmw or less is not persuasive because the inventive examples shown in the tables disclose gasolines with sulfur contents of well below 10 ppmw. For example, the gasoline identified as IE-1 has a sulfur content of 3 ppm.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Walter D. Griffin

Primary Examiner

Art Unit 1764

WG

June 2, 2004

Conferees

Glenn Caldarola

Shrive Beck



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